

GERALD LEYSHOCK 4/17/2019

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1	IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION	1 IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION
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4	MALEEHA AHMAD, et al.,) Plaintiffs,) v.) Case No. 4:17-cv-2455-CDP	4 MALEEHA AHMAD, et al.,) Plaintiffs,) v.) Case No. 4:17-cv-2455-CDP
5) CITY OF ST. LOUIS, MISSOURI,) Defendant.)	5) 6 CITY OF ST. LOUIS, MISSOURI,) 7 Defendant.)
6		8
7		9
8		10 DEPOSITION OF WITNESS, GERALD
9		11 LEYSHOCK, produced, sworn, and examined on April 17,
10	DEPOSITION OF GERALD LEYSHOCK TAKEN ON BEHALF OF THE PLAINTIFF APRIL 17, 2019	12 2019, between the hours of 1:00 p.m. and 3:00 p.m.
11		13 of that day at Saint Louis City Hall, 1200 Market
12		14 Street, Room 314, Saint Louis, Missouri, before
13		15 Susan J. Pybas, CCR No. 1446(T), within the state of
14		16 Missouri, in a certain cause now pending before the
15		17 United States District Court, Eastern District of
16		18 Missouri, Eastern Division, wherein Maleeha Ahmad,
17		19 et al. are the Plaintiffs; City of Saint Louis,
18		20 Missouri is the Defendant.
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	Exhibit A	
	Page 2	Page 4
1	INDEX	1 APPEARANCES
2	Page	2 FOR THE PLAINTIFFS:
3	EXAMINATIONS	3 Omri Praiss, Esquire
4	Examination by Mr. Praiss	4 ACLU OF MISSOURI FOUNDATION 5 406 West 34th Street, Suite 420 Kansas City, Missouri 64111 816.470.9938 opraiss@aclu-mo.org
5		6
6	EXHIBITS	7 FOR THE DEFENDANT:
7	Exhibit 1O Script for dispersal order	8 Robert Dierker, Esquire 9 Brandon Laird, Esquire
8		10 ST. LOUIS CITY COUNSELOR'S OFFICE 1200 Market Street, Room 314 11 Saint Louis, Missouri 63103 314.622.4800 dierkerr@stlouis-mo.gov
9		12 CERTIFIED COURT REPORTER: 13 Susan J. Pybas, CCR No. 1446(T) ALARIS LITIGATION SERVICES 14 711 North 11th Street Saint Louis, Missouri 63101 314.644.2191
10	(Exhibits attached.)	15
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	Exhibit A	

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<p style="text-align: center;">Page 5</p> <p>1 IT IS HEREBY STIPULATED AND 2 AGREED by and between counsel for the Plaintiffs and 3 counsel for the Defendant that this deposition may 4 be taken by Susan J. Pybas, CCR, No. 1446(T), a 5 Certified Court Reporter, thereafter transcribed 6 into typewriting, with the 7 signature of the witness being expressly requested.</p> <p>8 GERALD LEYSHOCK, 9 of lawful age, having been produced, sworn, and 10 examined on the part of the Plaintiffs, 11 testified as follows: 12 ***** 13 (Starting time of the deposition: 1:05 p.m.) 14 ***** 15 EXAMINATION 16 BY MR. PRAISS: 17 Q. Good afternoon. 18 A. Good afternoon. 19 Q. My name is Omri Praiss. I met you briefly 20 just before the start today. I'm an attorney, one 21 of the attorneys representing the plaintiffs in the 22 Ahmad vs. The City of St. Louis litigation. 23 Could you state your name for the record? 24 A. Jerry Leyshock, L-e-y-s-h-o-c-k. 25 Q. And, Mr. Leyshock, you tell me, what's the</p>	<p style="text-align: center;">Page 7</p> <p>1 easier for the court reporter. Is that fair? 2 A. Yes. 3 Q. Okay. If at any time I ask you a question 4 that's not clear for any reason, please ask me to 5 rephrase it. Otherwise, I'm going to assume you 6 understood it. Is that fair? 7 A. Yes, sir. 8 Q. Okay. Are you under any medication that 9 impairs your ability to answer truthfully today? 10 A. No. 11 Q. And you understand you're under oath and 12 subject to penalty of perjury? 13 A. Yes. 14 Q. What, if anything, did you do to prepare 15 for the deposition today? 16 A. Talked to the judge and Brandon. I read 17 some of Eric Larson's deposition and talked with 18 our -- our legal counsel embedded at headquarters, 19 Christine Hozic, a little bit. 20 Q. Okay. Other than reading Eric Larson's 21 deposition, which I took, I believe, just, like, 22 last week, did you review any other documents? 23 A. No, I didn't. 24 Q. Okay. 25 A. Documents, depositions?</p>
<p style="text-align: center;">Page 6</p> <p>1 best way for me to refer to you? 2 A. Just call me "Jerry." 3 Q. Mr. Leyshock or -- 4 A. Just call me "Jerry." 5 Q. Just "Jerry." I will try, but it's going 6 to be hard for me. 7 A. Why? 8 Q. Because all morning I referred to you as 9 "Lieutenant Colonel Leyshock." 10 Is that the correct title? 11 A. I am a lieutenant colonel. 12 Q. Okay. So -- 13 A. However you want to do it. 14 Q. Okay. Have you ever been deposed before 15 today? 16 A. Yes. 17 Q. How many times? 18 A. Oh, a hundred. 19 Q. Well, sorry to hear that. 20 Very quickly, no different than the other 21 depositions, I'm going to be asking you questions 22 today. 23 Just give me a chance to finish my 24 questions so we're not -- and I'll do the same thing 25 when you're answering, not interrupt you so it's</p>	<p style="text-align: center;">Page 8</p> <p>1 Q. Just any documents? 2 A. Yeah, I looked at some of our documents 3 from 2017 to refresh my memory. 4 Q. Okay. Could you describe to me, the best 5 you can, what documents from 2017 you looked at? 6 A. I looked at the detail again. I looked at 7 definitions when it comes to munitions to refresh 8 myself. I -- I don't know that I did too much more 9 than that. 10 Q. Okay. When you mention detail, what are 11 you referring to? 12 A. The names of most of the officers assigned 13 to the Stockley protest detail. 14 Q. Okay. And when you say "definition of 15 munitions," you're referring to chemical agents? 16 A. Yes. 17 Q. Okay. Just briefly describe your 18 educational background because I actually messed up 19 with Mr. Larson. Didn't ask him that and then found 20 out middle of the deposition that he's actually an 21 attorney. 22 A. Yeah. 23 Q. So I -- and I felt terrible about that. 24 So are you an attorney? Let's start with 25 that.</p>

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<p style="text-align: right;">Page 9</p> <p>1 A. Yeah. No, I'm not. 2 Q. Okay. 3 A. I got a BA at UMSL for speech 4 communications. 5 Q. Okay. Excuse my cough. 6 Briefly, describe your employment 7 background after completing your BA. 8 A. I was a -- a Teamster for about a year. I 9 was substitute teaching at Ritner High School, and 10 then I got -- finally got hired by the police 11 department. 12 Q. When did you get hired by the police 13 department? 14 A. I came on December 2nd of '79. 15 Q. And was that directly to the St. Louis 16 Metropolitan -- 17 A. Yes. 18 Q. -- Police Department? 19 Let me finish my question. 20 A. I'm sorry. 21 Q. That's okay. This will make it a lot 22 easier for her. 23 So since December of 19 -- did you say '79 24 -- 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Well, I didn't look at it specifically 2 like that. I looked at the difference between 3 handheld mace and -- and things that can be 4 launched. 5 Q. Okay. 6 A. So that. That. 7 Q. When you say "handheld mace," just to make 8 sure we're on the same page, are you referring to 9 just a handheld device that every officer is 10 provided as part of equipment to carry? 11 A. Yes, sir. 12 Q. Okay. And when you say "launched," what 13 are you referring to? 14 A. Tear gas or pepper balls. 15 Q. Are you familiar with the term "fogger"? 16 A. Yes. 17 Q. What is a fogger? 18 A. Well, it's an instrument that would have 19 more propellant than an actual canister of mace. 20 Q. Okay. When you use the term "handheld 21 mace," are you including a fogger within that or 22 not? 23 A. I am not. 24 Q. Okay. Can we agree then for purposes of 25 your deposition today when we -- both of us use</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. -- you've been with the St. Louis 2 Metropolitan Police Department? 3 A. (Witness nodded head.) 4 Q. Okay. Your title today is? 5 A. Lieutenant colonel. 6 Q. Okay. When did you become lieutenant 7 colonel? 8 A. Two -- two and a half years ago maybe. 9 Q. Okay. At the time of the Stockley 10 protests in the fall of 2017, am I correct you were 11 already lieutenant colonel? 12 A. Yes. 13 Q. You said one thing. You just mentioned 14 that you looked at the definition of chemical 15 munitions. 16 A. Yes. 17 Q. Okay. Do you recall what documents you 18 looked at for those definitions? 19 A. I think just what we have in our special 20 orders. 21 Q. Okay. Do you recall which special orders 22 off the top -- 23 A. No, sir. 24 Q. Okay. And what is your understanding the 25 term "chemical agents" includes?</p>	<p style="text-align: right;">Page 12</p> <p>1 handheld mace, we're just referring to the small 2 canister that's provided to police officers? 3 A. Yes. 4 Q. And we'll distinguish that from a fogger, 5 which sprayed out a larger amount of chemical 6 agents, correct? 7 A. That's right, yes. 8 Q. Is it your understanding that the chemical 9 within the handheld mace and the fogger is the same? 10 A. Yes. 11 Q. Okay. So there's no difference in 12 chemical, it's simply a difference in how the 13 material, the chemical is deployed? 14 A. Yes. 15 Q. Okay. Have you yourself ever provided 16 training to police officers relating to the use of 17 chemical agents? 18 A. No. 19 Q. Okay. Have you yourself received training 20 relating to the use of chemical agents? 21 A. Yes. 22 Q. Okay. Have you received specific training 23 about under what circumstances it's appropriate to 24 use chemical agents against protesters? 25 A. Yes.</p>

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<p>1 Q. Okay. When was the last time you received 2 that training?</p> <p>3 A. May -- maybe in 2017, but I don't -- I'm 4 -- I'm not crystal clear on that, but sometime 5 probably before Stockley.</p> <p>6 Q. Okay. Well, sometime before Stockley is 7 very broad because you started in 1997.</p> <p>8 A. Well --</p> <p>9 Q. So I'm trying to lock us in a little bit.</p> <p>10 A. All right.</p> <p>11 Q. If you can.</p> <p>12 A. I would -- I would definitely say -- I -- 13 I would believe I -- I -- I -- sometime within a 14 year before the Stockley protests.</p> <p>15 Q. Do you recall who provided that training?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you recall if that training was 18 mandatory for everybody or just for certain people?</p> <p>19 A. It seems to me my recollection is that the 20 Academy provided training for everybody with -- for 21 handheld mace.</p> <p>22 Q. Let me stop you right there. When you say 23 the Academy got trained for handheld mace, you're 24 referring to when officers are going through the 25 Academy to become police officers?</p>	<p>1 question. I object to my own question. 2 Do you recall ever receiving any 3 handwritten materials in connection with any 4 training that you've ever attended with respect to 5 the use of chemical agents?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you recall, do you still have 8 that training material?</p> <p>9 A. I -- I don't know. I -- I might, but I -- 10 I don't know.</p> <p>11 Q. Okay. Do you recall who prepared those 12 training materials?</p> <p>13 A. I would say -- I would think it would be 14 the Academy staff, but I -- again, I -- I can't 15 remember.</p> <p>16 Q. Okay. Do you recall if those training 17 materials that you received, if they actually 18 delineated specific guidelines in terms of when it's 19 appropriate or not appropriate to use chemical 20 agents?</p> <p>21 A. Well, we have special orders, and that -- 22 that is outlined in our special orders.</p> <p>23 Q. But -- and we're going to get -- trust me, 24 we'll cover the special orders in detail. I'm 25 trying to understand, other than the special orders,</p>
<p>1 A. No, the Academy staff.</p> <p>2 Q. Is that done on a regular basis for all 3 police officers?</p> <p>4 A. I think -- I think once a year, officers 5 have training with the Taser and the mace.</p> <p>6 Q. Okay. Are you included in that? Once a 7 year --</p> <p>8 A. Yes.</p> <p>9 Q. -- do you go through training?</p> <p>10 A. I think so.</p> <p>11 Q. You think so?</p> <p>12 A. I can't remember.</p> <p>13 Q. Well --</p> <p>14 A. I think -- I'm sorry. I can't remember 15 the last time that I did it in 2018, but I may have. 16 I -- I don't remember.</p> <p>17 Q. Okay.</p> <p>18 A. I believe it's for everybody.</p> <p>19 Q. Do you recall ever receiving any 20 handwritten documents or being presented with a 21 PowerPoint in connection with training relating to 22 the use of chemical agents?</p> <p>23 A. You're asking me if I -- if I have 24 received that?</p> <p>25 Q. I'll break it into two. It was a compound</p>	<p>1 if you recall receiving documents that provided 2 guidance about when it's appropriate or not 3 appropriate to use chemical agents.</p> <p>4 A. All I remember are the special orders.</p> <p>5 Q. Okay. So other than the special orders, 6 you can't remember any other specific training 7 materials that interpret or guide -- provide 8 guidance with respect to the use of chemical agents?</p> <p>9 A. Well, you asked if I received it.</p> <p>10 Q. Yeah.</p> <p>11 A. I'm aware that in training, CDT training 12 the instructors provide those CDT officers with -- 13 with maybe a manual or, if not, some written form 14 explaining some of the things that you're asking me 15 about, but I didn't get one.</p> <p>16 Q. Okay. And the reason I'm asking you is 17 we've asked for those materials. We've never 18 received them. So I'm just trying to see if anybody 19 actually remembers seeing them and maybe can help us 20 locate them if they exist.</p> <p>21 But you don't recall ever receiving 22 training materials about the use of chemical agents 23 yourself?</p> <p>24 A. Nothing other than special orders.</p> <p>25 Q. Gotcha.</p>

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<p>1 A. But I -- I mean, I should think that would 2 be something that you could talk to Rossomanno and 3 Jemerson about.</p> <p>4 Q. All right. Quite true. They've, 5 hopefully, done that.</p> <p>6 A. They -- I'm sorry?</p> <p>7 Q. I hope they've done that by now. 8 Let's see. Have you yourself ever 9 attended any training by Rossomanno or Jemerson, who 10 you just mentioned, with respect to the use of 11 chemical agents?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. During those trainings that you 14 attended, were any handouts provided with respect to 15 the use of chemical agents?</p> <p>16 A. I -- I think that's what I was referring 17 to earlier. I thought that there were some handouts 18 for the officers. I could be wrong.</p> <p>19 Q. Okay. Do you recall if they used a 20 PowerPoint during those presentations? And I'm 21 focusing specifically about the use of chemical 22 agents.</p> <p>23 A. I can't remember.</p> <p>24 Q. Okay. Over the course of your career, 25 have you used chemical agents at any time?</p>	<p>1 A. So we were -- we had formed a line on Page 2 facing Walton -- which -- which would be facing west 3 -- and we'd already been hit with a ton of rocks at 4 one point. And then we got that stopped and we were 5 trying to figure out what our next move was.</p> <p>6 And a -- a woman just became outraged -- a 7 younger woman -- and was threatening my officers at 8 first and then was literally, like -- acted like she 9 was going to attack the officers because people in 10 the crowd were, like, holding her back. And she had 11 a water bottle in her hand, and at some point, 12 she -- it -- she was pretty confrontational, and 13 they had told her she was going to be under arrest. 14 And I decided to arrest her, and I used my mace when 15 she reared back with the -- the water bottle.</p> <p>16 Q. If I understand, at some point during this 17 confrontation, you made the decision to arrest her?</p> <p>18 A. Yes.</p> <p>19 Q. And at that point, she reared back with a 20 water bottle and a --</p> <p>21 A. As I approached her, she moved the water 22 bottle up and I sprayed her.</p> <p>23 Q. Again, I'm going to ask you please let me 24 finish my question.</p> <p>25 A. Oh, I'm sorry.</p>
<p style="text-align: center;">Page 18</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Let's break it down. 3 Have you ever deployed pepper spray mace 4 using the handheld device?</p> <p>5 A. Yes.</p> <p>6 Q. Approximately how many times?</p> <p>7 A. I -- I've been a policeman almost 40 8 years. And I -- I don't remember when it came, but 9 I would say five or six times. I don't believe very 10 much more than that.</p> <p>11 Q. Have you ever deployed pepper spray mace 12 at protesters?</p> <p>13 A. Yes, one time.</p> <p>14 Q. Okay. Do you recall which protests?</p> <p>15 A. No, I -- two -- two times.</p> <p>16 Q. Do you recall which protests?</p> <p>17 A. At Page and Walton.</p> <p>18 Q. What was the second one?</p> <p>19 A. And it's possible at one of the protests 20 at headquarters.</p> <p>21 Q. Let's start with the incident of Page and 22 Walton.</p> <p>23 Could you describe the circumstances that 24 caused you to use chemical agents in a protest 25 setting?</p>	<p style="text-align: center;">Page 20</p> <p>1 Q. No, it's quite all right. I -- it's hard 2 because you're anticipating exactly where I'm going. 3 But --</p> <p>4 A. All right.</p> <p>5 Q. -- it's going to make it a lot easier 6 later.</p> <p>7 A. Well, I'm sorry about that.</p> <p>8 Q. After you made the decision --</p> <p>9 A. I don't want to be a bad witness.</p> <p>10 Q. You're doing great. 11 After you made the decision to arrest this 12 woman, if I understood you correctly, she reared 13 back with a water bottle in a threatening manner.</p> <p>14 A. Yes.</p> <p>15 Q. And at that point, you sprayed her with 16 the pepper spray?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What was -- you mentioned a second 19 incident that you thought occurred in connection 20 with a protest at headquarters.</p> <p>21 A. Yes.</p> <p>22 Q. Are you sure there was a second incident 23 or not? You seemed unsure before.</p> <p>24 A. I had -- I had my mace out. I don't -- I 25 really don't remember if -- if I maced somebody or</p>

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<p>1 not on that one, but I might have. I don't 2 remember.</p> <p>3 Q. Okay.</p> <p>4 A. That was a -- that was a -- that was a 5 free-for-all of about a minute in front of 6 headquarters. So I don't -- I -- I really don't 7 remember if I did or I didn't. I was ready to.</p> <p>8 Q. Okay. Well, I don't want you to 9 speculate.</p> <p>10 My question is, sitting here today, do you 11 have -- do you know if you did? If you actually 12 sprayed someone with pepper spray --</p> <p>13 A. No.</p> <p>14 Q. -- at headquarters?</p> <p>15 A. I don't know for sure.</p> <p>16 Q. Okay. You mentioned, though, there were 17 five or six other times. So I assume there were 18 other incidents, not in protests, where you've used 19 pepper spray?</p> <p>20 A. That's right.</p> <p>21 Q. Could you -- was there common 22 circumstances to those?</p> <p>23 A. That was men resisting arrest.</p> <p>24 Q. So in each of those situations, were 25 individuals also resisting arrest similar to the</p>	<p>1 remember.</p> <p>2 Q. Okay.</p> <p>3 A. It's hard for me to even -- those -- some 4 of those incidents are older. I -- I'd have to sit 5 here and really think about it.</p> <p>6 Q. Okay. Well, let's go talk about the 7 incident at Page and Walton, which is not that far 8 back in time. That was --</p> <p>9 A. That was a --</p> <p>10 Q. -- 2015, I believe, August, correct?</p> <p>11 A. That's right.</p> <p>12 Q. All right. Do you recall any situation 13 with that, the protester, providing any warning that 14 if she continues to resist in any manner that you 15 were going to deploy chemical agents at her?</p> <p>16 A. I -- here's exactly what I recall I told 17 her: She was under arrest. That's -- that's all I 18 remember.</p> <p>19 Q. Thank you.</p> <p>20 Have you ever deployed pepper spray mace 21 using what we described as a "fogger," the 22 high-capacity extended range OC spray?</p> <p>23 A. No.</p> <p>24 Q. Who has permission to deploy pepper spray 25 using the fogger?</p>
Page 22	Page 24
<p>1 lady in the protests?</p> <p>2 A. Some of it was -- it -- it -- they weren't 3 at protests, but I have placed somebody under arrest 4 and -- and they wanted to fight and I maced them.</p> <p>5 Q. Okay. You say they resisted arrest or 6 wanted to fight. What do you -- can you describe 7 that for me? Were they aggressively acting in a 8 manner that threatened you?</p> <p>9 A. Yes.</p> <p>10 Q. Any of these situations, did you consider 11 warning the individuals that unless they ceased 12 resisting the arrest that you would resort to 13 spraying them with pepper spray?</p> <p>14 A. I don't remember.</p> <p>15 Q. You have no recollection of ever warning 16 them, saying, "Sir" or "Ma'am, please stop. If you 17 don't, I'm going to spray you with pepper spray"?</p> <p>18 A. Well, I guarantee you I told them they 19 were under arrest, and then I can't -- I can't 20 remember exactly how it went out. I -- I may -- I 21 mean, first off, I would -- I should think -- it 22 didn't happen very often, but when I brought my mace 23 out, I should -- have a feeling that the person that 24 was resisting arrest had a feeling they were going 25 to get maced. So I can't -- I can't -- I don't</p>	<p>1 A. Only sergeants on the CDT team had 2 foggers, and it's at their discretion.</p> <p>3 Q. Okay. Do you know if there's specific 4 training provided to those sergeants who are 5 authorized to use a fogger with respect to when they 6 should or shouldn't use it?</p> <p>7 A. I think that was covered in training that 8 Sergeants Rossomanno and Jemerson provided.</p> <p>9 Q. Okay. Have you deployed any other 10 chemical agents? And you mentioned at the 11 beginning, like, pepper balls and tear gas, things 12 like that.</p> <p>13 A. No, I haven't.</p> <p>14 Q. Okay. At the bottom of the stack of 15 exhibits that you have in front of you, there are 16 two exhibits that I want you to focus on. I think 17 they're Exhibit 8 and Exhibit 9.</p> <p>18 A. Okay.</p> <p>19 Q. Do you have those?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. Let's start with Exhibit 8.</p> <p>22 Do you recognize that one?</p> <p>23 A. (Reviews document.) Yes.</p> <p>24 Q. Okay. And for the record, am I correct 25 that that's -- this is Section IV Special Order</p>

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<p style="text-align: right;">Page 25</p> <p>1 1-01, and it deals with pepper mace?</p> <p>2 A. Yes, sir.</p> <p>3 Q. This is one of the documents that you</p> <p>4 reviewed for your deposition today?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And Exhibit 9 --</p> <p>7 A. Yes.</p> <p>8 Q. -- have you seen it in this form?</p> <p>9 A. (Reviews document.) Yes.</p> <p>10 Q. Are you familiar with the declaration that</p> <p>11 Mr. Baumgartner provided in this litigation?</p> <p>12 A. (Reviewed document.) No, I haven't seen</p> <p>13 this.</p> <p>14 Q. Okay. If you don't mind --</p> <p>15 A. I'm sorry.</p> <p>16 Q. That's quite all right. That's why I</p> <p>17 wanted to slow you down you.</p> <p>18 If you look at Exhibit C to this document</p> <p>19 a few pages in --</p> <p>20 A. Okay.</p> <p>21 Q. -- Exhibit C, do you see on the top of it,</p> <p>22 this is Section XIII of Special Order 1-01?</p> <p>23 A. (Reviewed document.) Yes.</p> <p>24 Q. And this one deals with deployment of</p> <p>25 chemical agents for crowd dispersal; am I correct?</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. In your words, what does it mean to be the</p> <p>2 "incident commander"?</p> <p>3 A. Basically, I had the responsibility of</p> <p>4 directing the police department's actions in</p> <p>5 response to the protests.</p> <p>6 Q. You're familiar that in connection with</p> <p>7 the Stockley protests, there were incidents where</p> <p>8 police officers deployed pepper spray using a</p> <p>9 handheld device at protesters, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. When the police officers did so,</p> <p>12 were they -- were their actions pursuant to Section</p> <p>13 IV of Special Order 1-01 or Section XIII of Special</p> <p>14 Order 1-01?</p> <p>15 A. (Reviewed document.) So we're -- we're</p> <p>16 talking about this special order here, right?</p> <p>17 Q. Well, we have two of them, sir. We have</p> <p>18 -- again, I'm going to be referring to them.</p> <p>19 A. Where's --</p> <p>20 Q. Let's -- let me --</p> <p>21 A. Where's -- okay. Four -- you want 4 on</p> <p>22 this one?</p> <p>23 Q. Uh-huh.</p> <p>24 A. And what's -- which one on this one?</p> <p>25 Q. Thirteen?</p>
<p style="text-align: right;">Page 26</p> <p>1 A. All right. Wait a second. I went to this</p> <p>2 -- okay. (Reviews document.)</p> <p>3 Over here. Thanks.</p> <p>4 Q. Now that you're on the right page, let me</p> <p>5 ask you my questions again.</p> <p>6 Are you now looking at Exhibit C to</p> <p>7 deposition Exhibit 9?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And this is the one -- am I correct</p> <p>10 this is -- that has Section XIII of Special Order</p> <p>11 1-01?</p> <p>12 A. Yes.</p> <p>13 Q. And this one pertains to the deployment of</p> <p>14 chemical agents for crowd dispersal, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you review this exhibit to prepare for</p> <p>17 today's deposition?</p> <p>18 A. No.</p> <p>19 Q. Okay. So the only -- when you refer that</p> <p>20 you looked at exhibits dealing with chemical agents,</p> <p>21 you only looked at Exhibit 8?</p> <p>22 A. Yes.</p> <p>23 Q. Gotcha. You were the incident commander</p> <p>24 for the Stockley protests, correct?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes.</p> <p>2 Q. Lieutenant Colonel Leyshock?</p> <p>3 A. Yes.</p> <p>4 Q. Let me make -- let's make sure the record</p> <p>5 is clear.</p> <p>6 In front of you, again, you have two</p> <p>7 provisions within Special Order 1-01. You have</p> <p>8 Section IV, which deals with handheld pepper spray,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you have Section XIII, which deals</p> <p>12 with -- generally with the deployment of chemical</p> <p>13 agents for crowd dispersal, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And, again, my question a couple seconds</p> <p>16 ago to you was that in connection with the Stockley</p> <p>17 protesters, we know that there's some incidents</p> <p>18 where police officers deployed chemical agents using</p> <p>19 a handheld device --</p> <p>20 A. Yes.</p> <p>21 Q. -- at protesters.</p> <p>22 A. Okay.</p> <p>23 Q. My question to you is when the police</p> <p>24 officers used their handheld device to spray at</p> <p>25 protesters, were they acting pursuant to Section IV</p>

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<p style="text-align: right;">Page 29</p> <p>1 or Section XIII of Special Order 1-01?</p> <p>2 A. All right. So here's -- here's the 3 problem I'm having with it. Section IV, you're 4 talking about this -- this whole area here, A, B, C?</p> <p>5 Q. I'm talking the entire Section IV of 6 Special Order 1-01.</p> <p>7 A. All right. Then I'd say they were acting 8 under both.</p> <p>9 Q. Under both.</p> <p>10 And what's the basis for your statement, 11 if I may, just so I understand?</p> <p>12 A. Well, if you look at 1-01, "Chemical 13 agents will not be used for the purpose of 14 frightening or punishing individuals for exercising 15 their constitutional rights." Nobody ever did that 16 so that's No. 1.</p> <p>17 And then they talk about procedures with 18 pepper mace, and it's -- I guess we could go to C. 19 "Since pepper mace is a method of physical control, 20 it may only be used to overcome resistance to an 21 officer's unlawful authority. Any arrest in which 22 pepper mace is used will be classified as resisting 23 arrest." And I think the key there is overcoming 24 resistance.</p> <p>25 And "An officer may use pepper mace to</p>	<p style="text-align: right;">Page 31</p> <p>1 Section XIII?</p> <p>2 A. Yes, I am.</p> <p>3 Q. Special Order 1-01. Under Section C, 4 there, it talks about "restrictions on deployment," 5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And you've referred a couple times to the 8 provision 1 there about not using chemical agents 9 for the purpose of frightening or punishing 10 individuals for exercising their constitutional 11 rights. Am I correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you see there's, under No. 2, there, 14 other provisions dealing with restricting the use of 15 chemical agents to disperse groups unless certain 16 conditions are satisfied, correct?</p> <p>17 A. (Reviewed document.) That's right.</p> <p>18 Q. Okay. Is it your understanding that that 19 provision also applied in connection with the 20 Stockley protests?</p> <p>21 A. Absolutely.</p> <p>22 Q. Okay.</p> <p>23 (WHEREIN, after an off-the-record 24 discussion, the proceedings resumed as follows, to 25 wit:)</p>
<p style="text-align: right;">Page 30</p> <p>1 effect a lawful arrest which otherwise lawfully 2 controls a combative, uncooperative person when 3 verbal commands and persuasion have been ineffective 4 in inducing cooperation."</p> <p>5 So I think they -- they -- and we didn't 6 -- we didn't ever do -- put mace or chemical 7 warnings out to scare somebody because they were 8 protesting, but Section B covers why they would use 9 their pepper mace.</p> <p>10 Q. Okay. Section XIII of Special Order 1-01 11 also has provisions dealing with the use of chemical 12 agents in connection with dispersing crowds; do you 13 see that?</p> <p>14 A. (Reviewed document.) I don't see XIII you 15 keep talking about. Why am I miss -- okay. Oh, 16 right -- starting right here.</p> <p>17 And you're saying -- can you say your 18 question again?</p> <p>19 Q. Sure. And, again, Lieutenant Colonel 20 Leyshock, if ever I ask a question that's not clear, 21 remember we established at the beginning just stop 22 me and ask -- I ask -- and even though you're not 23 allowed to ask questions, I'm happy -- I want to 24 make sure we're on the same page.</p> <p>25 So, again, you're looking right now at</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. If I understood your testimony correct 2 from the last few minutes ago, it's your 3 understanding that when police officers used 4 handheld pepper spray at protesters during the 5 Stockley protests, their actions were governed both 6 by Section IV of Special Order 1-01 as well as 7 Section XIII of Special Order 1-01; is that correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And you understand that there's 10 differences in how -- in the -- strike that.</p> <p>11 You understand that Section IV and Section 12 XIII impose different requirements and restrictions 13 about the use of handheld pepper spray, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Am I correct that under Section IV, 16 for example, there does not appear to be a specific 17 provision that requires a warning by an officer 18 prior to the use of handheld pepper spray, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. However, under Section XIII of Special 21 Order 1-01, clearly, one of the requirements is that 22 there will be clear and unambiguous warnings being 23 issued stating that chemical agents will be used in 24 connection with the area that's being cleared, 25 correct?</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. Have you ever issued a dispersal order?</p> <p>3 A. I don't think so.</p> <p>5 Q. Okay. Have you ever provided any training 6 with respect to the circumstances when somebody can 7 issue a dispersal order and the manner in which it 8 should be provided?</p> <p>9 A. Well, I'll -- here's how I'll answer. I 10 helped write the -- the actual verbiage for the -- 11 the word -- the wording on dispersal so . . .</p> <p>12 Q. Okay. And we're going to look at an 13 exhibit with that in a minute .</p> <p>14 A. Okay.</p> <p>15 Q. But my question is even beyond just -- 16 what you just described, writing the pertinent 17 language, have you trained people about the manner 18 and the circumstance when they should issue a 19 dispersal order?</p> <p>20 A. I -- I don't think so. I had a lot of 21 discussions with Rossomanno and Jemerson about it. 22 I wouldn't say I was "training" them --</p> <p>23 Q. Okay.</p> <p>24 A. -- just so that we were all on the same 25 page.</p>	<p>1 I correct?</p> <p>2 A. Yes.</p> <p>3 Q. You mentioned a few minutes ago that you 4 prepared a document about dispersal orders. Is this 5 the document?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you recall when you prepared it?</p> <p>8 A. I would think pretty close to 9 September 1st of 2017.</p> <p>10 Q. Was this done in preparation for the 11 Stockley protests?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you know if prior to September 14 1st, 2017, there was anything similar to this in 15 writing?</p> <p>16 A. I think we used something very, very 17 similar for the Michael Brown verdict announcement. 18 I think we used something very similar to that -- to 19 this then.</p> <p>20 Q. Do you recall if you used something for 21 the Page and Walton protests?</p> <p>22 A. Yeah. Well, we were still using whatever 23 the -- the wording is. Could have been this same 24 thing.</p> <p>25 This is just something that I wanted all</p>
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<p>1 Q. Do you know if officers in general are 2 provided with training with respect to the 3 circumstance when a dispersal order should be 4 issued?</p> <p>5 A. I think that's covered with Jemerson and 6 Rossomanno, but I -- I can't tell you for sure.</p> <p>7 Q. Okay.</p> <p>8 A. And I'm not exactly sure if the whole 9 department knows it or not.</p> <p>10 Q. Okay.</p> <p>11 (WHEREIN, after an off-the-record 12 discussion, the proceedings resumed as follows, to 13 wit:)</p> <p>14 BY MR. PRAISS:</p> <p>15 Q. Lieutenant Colonel Leyshock, you've been 16 handed what's been marked as Exhibit 10.</p> <p>17 Do you have that?</p> <p>18 (WHEREIN, Exhibit 10 was marked for 19 identification by the court reporter.)</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And the date of this is 22 September 1st, 2017; do you see that?</p> <p>23 A. (Reviewed document.) Yes.</p> <p>24 Q. And it has instructions for the issuance 25 of warning from police officer unlawful assembly; am</p>	<p>1 the commanders to have prior to Stockley. It could 2 very easily be word-for-word what we used in 3 Ferguson, and Page and Walton.</p> <p>4 Q. Okay. Do you still have copies of the 5 ones that were used in the Michael Brown protests or 6 the Page and Walton?</p> <p>7 A. I don't have too much stuff left from 8 that.</p> <p>9 Q. Okay.</p> <p>10 A. So I -- I wouldn't want to say yes. If 11 you wanted me to get them for you, I don't know if I 12 could.</p> <p>13 Q. Okay. With respect to Exhibit 10, the one 14 dated September 1st, 2017, is it fair to say you 15 didn't create this from scratch but you -- what you 16 believe is you actually used a version that existed 17 already --</p> <p>18 A. Yes.</p> <p>19 Q. -- and potentially kept it exactly the 20 same or made some changes to it?</p> <p>21 A. That's right.</p> <p>22 Q. Okay. Sitting here today, do you recall 23 any specific changes that you made to it?</p> <p>24 A. Oh, no, I don't.</p> <p>25 Q. Okay. Did anybody help you in this</p>

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<p style="text-align: right;">Page 37</p> <p>1 process?</p> <p>2 A. Yes.</p> <p>3 Q. Who helped you?</p> <p>4 A. Christine Hodzic.</p> <p>5 Q. Okay. And she is in-house counsel?</p> <p>6 A. Yes.</p> <p>7 Q. Got you.</p> <p>8 You know, the dispersal begins by saying, 9 "This is an unlawful assembly." Am I correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And is it fair to say that a predicate to declaring – strike that.</p> <p>12 Is it fair to say that a predicate for 13 issuing this dispersal order is that there has to be 14 an unlawful assembly present?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Who makes the determination that the unlawful assembly is taking place?</p> <p>17 A. I can make it, but also other commanders 18 could -- could make it and, certainly, Rossomanno 19 and Jemerson could make it.</p> <p>20 Q. Okay. Is there a certain level you have to be at the police department rank-wise in order to to declare an unlawful assembly, or can anybody in reality make one?</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Do you know who declared it on the morning of the 15th?</p> <p>2 A. I mean, I gave permission for it to be done, but I don't know who actually made the announcement.</p> <p>3 Q. Do you know who made the announcement on the afternoon of the 15th?</p> <p>4 A. I'm pretty sure -- I'm pretty sure on both it was probably Rossomanno or Jemerson. I really don't think there would have been anybody else.</p> <p>5 Q. Okay. How about on Sunday evening of the 17th?</p> <p>6 A. That --</p> <p>7 Q. Who do you believe declared an unlawful assembly at that point?</p> <p>8 A. Both Rossomanno and Jemerson both did, I believe.</p> <p>9 Q. Okay. Going back to Exhibit 10, and this is the -- is it okay if I call this the "script for dispersal order"?</p> <p>10 A. That's fine.</p> <p>11 Q. Okay. Again, it begins with "This is an unlawful assembly." And then after indicating that this is your first order to disperse, it says, "You are hereby ordered to disperse from this area by</p>
<p style="text-align: right;">Page 38</p> <p>1 A. Anybody in reality could make one.</p> <p>2 Q. Okay. In connection with the Stockley protests, did you at any time make a determination that there was unlawful assembly, or was it other officers on the ground making that determination?</p> <p>3 A. Well, I -- I made it at Lake and Waterman</p> <p>4 --</p> <p>5 Q. Okay.</p> <p>6 A. -- the minute the policeman got injured.</p> <p>7 Q. What about -- do you know what other times the unlawful assemblies were declared in connection with the Stockley protests?</p> <p>8 A. I -- I believe the first action in the</p> <p>9 morning on the 15th, it was declared. I believe,</p> <p>10 that in the afternoon, it was declared. That</p> <p>11 evening on the 15th at Lake and Waterman it was</p> <p>12 declared, and -- and then it was declared on the</p> <p>13 evening of the 17th.</p> <p>14 Q. Okay. And you've identified four different times where unlawful assemblies were declared in connection with the Stockley protests.</p> <p>15 The only one where you were actually the person declaring an unlawful assembly was on the evening on the 15th at Lake and Waterman, correct?</p> <p>16 A. That's right.</p>	<p style="text-align: right;">Page 40</p> <p>1 moving" and has in quotes "to the sidewalk and</p> <p>2 walking (give a clear course of egress)."</p> <p>3 Do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. Am I correct that the dispersal order script that you prepared does not include any language that specifically instructs individuals how far they have to leave the area in order to be in compliance?</p> <p>6 A. That's true.</p> <p>7 Q. Okay. Am I correct that the dispersal order script that you prepared does not include any instructions specifically telling individuals for how long they have to leave the area in order to be compliant?</p> <p>8 A. That's true.</p> <p>9 Q. Okay. Are you familiar with the crime of refusal to disperse?</p> <p>10 A. I don't -- I don't -- I don't -- I don't</p> <p>11 know exactly what that means.</p> <p>12 Q. All right.</p> <p>13 A. There is -- we have -- I don't know that</p> <p>14 it's exactly how it -- if you show me an ordinance,</p> <p>15 I can better answer that --</p> <p>16 Q. I'll try.</p>

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<p>1 A. -- because I'd have to look at our 2 interference -- 3 Q. That's fine. It's not that important. 4 I'm just curious. 5 A. -- ordinance. Impeding the flow of 6 traffic and interference and resisting arrest is all 7 part of refusal to disperse. 8 Q. Okay. Let's see. We've talked now a 9 little bit about the dispersal order, and I think we 10 established that the predicate for it is first there 11 has to be an unlawful assembly, correct? 12 A. Yes. 13 Q. Okay. And you've indicated that in 14 connection with the Stockley protests, at least, 15 there were four specific time periods where 16 Rossomanno and/or Jemerson you believe issued -- 17 declared an unlawful assembly, correct? 18 A. Yes. 19 Q. Okay. 20 A. And may -- may I add something? 21 Q. Okay. 22 A. I'm not so sure, the more I sit here and 23 think about it, that Lieutenant Sachs, the commander 24 of SWAT, may not -- he may also have issued a 25 declaration on Sunday evening on the 17th that that</p>	<p>1 A. That's -- that's fine. 2 Q. My mistake. 3 What I don't believe I've asked you is 4 about training with respect to what constitutes an 5 unlawful assembly. So let's focus on that. 6 Have you yourself ever provided training 7 to Rossomanno, Jemerson, or anybody else about under 8 what circumstances an unlawful assembly exists? 9 A. I would -- I -- I would say I -- I don't 10 think I would use the term "train," but we had a lot 11 of discussions, not only with myself and them but 12 also with people from the legal division and them to 13 -- to talk about that. 14 Q. Okay. And sitting here today, what would 15 you -- what is your understanding under what 16 circumstances an unlawful assembly exists, somebody 17 is engaged in an unlawful assembly? 18 A. When there's violent and criminal 19 activity. 20 Q. Any other, what I would call, "elements or 21 predicates" for someone to be charged with offense 22 of an unlawful assembly? 23 A. I -- I think that that covers it. 24 Q. Okay. Do you understand that people have 25 to reach some kind of an agreement in order to be</p>
<p>1 was an unlawful assembly. 2 Q. Okay. 3 A. Or had somebody do it. 4 Q. I want to focus now about declaring an 5 unlawful assembly, if I could. 6 Have you yourself ever declared an 7 unlawful assembly? 8 A. I -- I think you asked me that already. 9 Q. And I apologize if I did. 10 A. I don't -- 11 Q. I thought I asked you about issuing a 12 dispersal order, not asking about first -- we've 13 established that as a predicate for issuing a 14 dispersal order you have to declare -- you have to 15 find an unlawful assembly. 16 So my question to you is have you ever 17 yourself determined that there was an unlawful 18 assembly? 19 A. Well, I -- I definitely determined it. 20 Q. Okay. 21 A. I typically have somebody do the dispersal 22 orders. I don't. 23 Q. Okay. And I apologize. I did ask you 24 that before. So I jumped around from dispersal to 25 unlawful assembly.</p>	<p>1 charged with an offense of unlawful assembly? 2 A. Yes. That's part of the language in both 3 the state and city ordinance. 4 Q. Okay. So -- 5 A. My stomach's growling. Sorry about that. 6 Q. That's quite all right. 7 So I want to make sure if -- I'm trying to 8 get as full as possible just your understanding of 9 what it takes to charge someone with committing the 10 offense of unlawful assembly. 11 Do you agree with me that there has to be 12 some sort of agreement between people to commit an 13 unlawful act? 14 A. Yes. 15 Q. And they have to agree to commit that 16 unlawful act with force or violence? 17 A. Yes. 18 Q. Okay. Anything else? 19 A. (Shook head side to side.) 20 Q. Okay. 21 A. I don't know. 22 Q. Okay. Let's focus on -- is your answer 23 you can't come up with anything else? 24 A. I think that covers it. 25 Q. Okay. Let's focus on the evening of the</p>

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<p>1 17th, and so I'm talking about Sunday, 2 September 17th in connection -- of 2017 in 3 connection with the Stockley protests. Okay? 4 A. Yes, sir. 5 Q. Okay. Am I correct that early that 6 evening, there was some property damage that took 7 place downtown? 8 A. Yes. 9 Q. Okay. Am I correct that occurred around 10 between 8:00 and 8:30 in the evening? 11 A. Yes. 12 Q. Okay. To the best of your knowledge, do 13 you recall what location that took place? 14 A. Around the 900 block of Olive. 15 Q. And what's the cross -- the 900 block of 16 Olive. Okay. You just answered. 17 Were people arrested in connection with 18 that property damage? 19 A. I know one young man was arrested. I 20 don't know how many others. 21 Q. Okay. Am I correct that after that 22 property damage that took place around 8:30 p.m. on 23 the 900 block of Olive, there was no other property 24 damage done downtown that evening? 25 A. No, I don't think that's true. I think</p>	<p>1 A. I don't know what "on the ground means." 2 Q. He was downtown -- 3 A. He was downtown. 4 Q. -- dealing with the protesters? 5 A. He was downtown, yes. 6 Q. Okay. At the preliminary injunction 7 hearing, he was asked this question. I'll read it 8 into the record. 9 "Now, you're not aware of any property 10 damage happening in downtown St. Louis after that 11 8:00 to 8:30, are you?" 12 ANSWER: "No, I'm not." 13 A. Okay. 14 Q. Do you have any specific facts to refute 15 his testimony? Because that's what I'm basing my 16 question to you on. 17 A. That's fine. 18 I think that I -- seems to me I remember 19 way after this that I was told that there -- the 20 bikes came up on other vandalism: Planters had been 21 broken, a sofa thrown out in the middle of the 22 street, some things like that. 23 Q. Okay. Do you recall what time that was? 24 Because I believe that's before -- 25 A. It was after -- it was after the arrest of</p>
<p>1 that the bikes saw other people doing some 2 destruction of property. 3 Q. Okay. And -- 4 A. But I can't testify -- I -- I -- I didn't 5 see it. 6 Q. Okay. 7 A. That's my recollection. 8 Q. Do you recall what time that was? 9 A. I -- I -- there's -- we have a timeline, 10 and we could obviously work off that. 11 If you're going -- if you want me to go by 12 my memory, I know that there were descriptions 13 coming out of a subject with maybe an orange shirt 14 over his head kicking in windows. There's about 15 seven different businesses that had their doors or 16 windows shattered, and they were putting out 17 description. And -- and but, also, after he was 18 arrested, it's my understanding that there was 19 more -- there was -- there was still some more 20 destruction of property or more vandalism. 21 Q. Okay. Am I correct that -- you know 22 Timothy Sachs, right? 23 A. Yes. 24 Q. Okay. And he was on the ground at the 25 time, correct, that evening?</p>	<p>1 the individual I mentioned. 2 Q. Okay. 3 A. That's my understanding. 4 Q. Do you know what time that vandalism 5 occurred that you just referred to? 6 A. I'd say within a half -- this is -- I have 7 had the feeling, in my mind, that it was maybe 30 8 minutes after he was arrested. 9 Q. Okay. So somewhere close -- a little 10 after 8:30 is when you believe this other vandalism 11 took place? 12 A. I'd say so. 13 Q. Okay. Let me narrow the window down. 14 Between 9:00 p.m. and, let's say, 15 11:00 p.m., are you aware, sitting here today, of 16 any specific facts of the actual vandalism taking 17 place downtown? 18 A. I'd say no. 19 Q. Okay. Am I correct that either Jemerson 20 or Rossomanno declared an unlawful assembly sometime 21 around 11:00 p.m. that night? 22 A. Yes. 23 Q. Okay. In order to declare an unlawful 24 assembly, am I correct that it's your understanding 25 there has to be articulable facts to support all the</p>

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<p>1 elements –</p> <p>2 A. Yes.</p> <p>3 Q. -- necessary to do so?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. And when I use the phrase "articulable facts," you understand that means actually specific facts to support the elements, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. You just testified that from 9:00 p.m. until 11:00 p.m. on that Sunday –</p> <p>8 A. I said -- you said "roughly," and I'd -- I'd say -- I'd say it was "roughly." I -- we can look at a timeline, if you really wanted to know for sure.</p> <p>9 Q. Okay. I'm going with what you remember, your memory is right now.</p> <p>10 A. Well, okay. That's fine.</p> <p>11 Q. To the best of your memory, you told me that after approximately 9:00 p.m., you're not aware of any acts of vandalism happening in the city, correct?</p> <p>12 A. That's right. Yes.</p> <p>13 Q. So all I'm saying is from approximately two hours from 9:00 to 11:00, sitting here today,</p>	<p>1 actual businesses had been damaged. But they were drawn to the area of Locust and Tucker where the bikes were facing an unruly crowd, and Major Howard told me that they were throwing things at the policemen and I believe that's -- this is what precipitated the exact warnings given by Jemerson and Rossomanno. Things -- they -- they were taunting the officers. They were belligerent to the officers, but then when they started throwing things, that's when -- that's when that was announced.</p> <p>12 Q. What time was this?</p> <p>13 A. I'd have to look at the timeline.</p> <p>14 Q. Well, I don't have the timeline with me. I'm asking you as best you recall what –</p> <p>15 A. Somewhere -- somewhere around this -- any -- I would say somewhere around 10:45 or 11:00.</p> <p>16 Q. Okay.</p> <p>17 A. It could have been sooner.</p> <p>18 Q. How far was this incident that you're referring to with respect to where the kettle took place at 11:30?</p> <p>19 A. How far -- first off, you're talking about the arrests. I -- we didn't do a "kettle." We -- we made "arrests."</p>
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<p>1 you can't point me to any specific acts of violence that took place that night?</p> <p>2 A. I personally can't, no.</p> <p>3 Q. Okay. We know that around 11:00 p.m. you testified Rossomanno or Jemerson declared an unlawful assembly, correct?</p> <p>4 A. Yes.</p> <p>5 Q. In order to declare unlawful assembly, you testified before that there would have to be an agreement among individuals to commit an unlawful act with force or violence. Do you recall that?</p> <p>6 A. Yes.</p> <p>7 Q. Has Jemerson or Rossomanno explained to you or provided you with specific facts that supported them declaring an unlawful assembly at 11:00 o'clock, specifically that there were individuals in the crowd who had reached an agreement to commit an unlawful act with force or violence?</p> <p>8 A. Yes.</p> <p>9 Q. What specific facts have they told you supported that determination?</p> <p>10 A. Major Dan Howard had been dispatched downtown with some detectives and, I believe, a lieutenant to try to help us get an idea of what</p>	<p>1 Q. Okay. You think that's --</p> <p>2 A. So that was at Washington and Tucker.</p> <p>3 Q. Right.</p> <p>4 A. That's where we made arrests.</p> <p>5 Q. 11:30 or so, there was a mass arrest at Washington and Tucker, correct?</p> <p>6 A. Thank you. Yes.</p> <p>7 Q. Okay. And --</p> <p>8 A. Locust is three blocks south of there, three or four blocks south of there.</p> <p>9 Q. Okay. And if I understand you correctly, it's your testimony and recollection that sometime before 11:00, there was some activity by individuals that caused the declaration of unlawful assembly at that location?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Was there -- am I correct also, subsequently, a separate declaration of unlawful assembly at Washington and Tucker?</p> <p>12 A. I don't know -- I don't know where the last warnings were given. There -- there were warnings coming out every seven, eight, ten minutes by Rossomanno, and I know Jemerson gave some, but I -- I couldn't -- I could not tell you if there was one given there.</p>

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<p>1 Q. I'm focusing about the people in the area 2 of Washington and Tucker, let's say between 11:00 3 and 11:30 right before the mass arrest took place. 4 During that time period, are you aware of any facts 5 that suggested there were individuals in that crowd 6 who had reached an agreement to commit an unlawful 7 act with force or violence?</p> <p>8 A. Well, most of the people in that crowd 9 started off at Locust and Tucker. They ended up at 10 Washington and Tucker.</p> <p>11 Q. Okay.</p> <p>12 A. Same people.</p> <p>13 Q. Is there a reason why the police officer 14 didn't simply just arrest those individuals if they 15 could determine who they were rather than conduct a 16 mass arrest of over 100 people?</p> <p>17 A. I asked Major Howard if he thought that 18 they could effect arrests, and he said we didn't 19 have enough people --</p> <p>20 Q. I'm confused. You --</p> <p>21 A. -- at Locust and Tucker.</p> <p>22 Q. Okay. But, again, I'm focusing about the 23 events at Washington and Tucker before the mass 24 arrest that happened there. Okay?</p> <p>25 A. Well, you -- you're confusing me --</p>	<p>1 previously at Locust and Tucker had migrated down to 2 Washington and Tucker; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And my question to you is before 5 11:30, rather than conduct a mass arrest where 6 hundreds of people were arrested, why didn't the 7 police officers there simply go in the crowd and 8 arrest the handful of individuals who were the 9 troublemakers?</p> <p>10 A. And my answer's the same: I asked Major 11 Howard if he could effect arrests. He said we 12 didn't have enough people.</p> <p>13 Q. But at some point, you had enough officers 14 there to arrest over 100 people. When those other 15 officers arrived, why didn't you, again, simply 16 arrest the handful, the three, four, five people 17 that were the troublemakers rather than bringing 18 officers from every direction where you end up with 19 hundreds of officers to arrest hundreds of people, 20 many of whom were just peacefully standing at the 21 corner there?</p> <p>22 MR. DIERKER: Objection to form.</p> <p>23 Argumentative.</p> <p>24 You may answer.</p> <p>25 BY MR. PRAISS:</p>
<p>1 Q. Okay.</p> <p>2 A. -- because you said two different things, 3 in my mind.</p> <p>4 Q. Yeah. I apologize. Let's start over.</p> <p>5 A. Let -- let's start over.</p> <p>6 Q. Lieutenant Leyshock, let me start over.</p> <p>7 First of all, my questions right now, I'm 8 focusing about the events that happened immediately 9 before the mass arrest that happened at Washington 10 and Tucker, which in the media has been 11 characterized as part of kettle. Okay?</p> <p>12 A. That's fine.</p> <p>13 Q. Okay. What time did that mass arrest take 14 place, to the best of your knowledge?</p> <p>15 A. Maybe around 11:30.</p> <p>16 Q. That's -- my question is in the half-hour 17 before that mass arrest at Washington and Tucker, 18 again, was there any articulable facts to support 19 the contention that two individuals or more had 20 reached an agreement to violate -- to commit an 21 unlawful act with force or violence?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And if I understood you correctly, 24 your testimony a few minutes ago in support of that 25 was the fact that some of the individuals who were</p>	<p>1 Q. You may answer.</p> <p>2 A. All right. I believe there was quite a 3 few people at Locust and Tucker. I don't know 4 exactly. I got the impression there could have been 5 close to 100. I might be wrong.</p> <p>6 He said he didn't have enough the people 7 to effect arrest. We gave an unlawful -- we gave an 8 order that it was an unlawful assembly and everybody 9 had to disperse.</p> <p>10 Q. When those people that you mentioned 11 migrated from Locust and Tucker to Washington and 12 Tucker, in the half-hour before the mass arrest that 13 took place at Washington and Tucker, are you aware 14 of any protesters engaged in force or violence 15 against property or against police officers?</p> <p>16 A. The -- the ones at Locust at Tucker were 17 throwing things at the policemen.</p> <p>18 Q. Were they throwing things at policemen at 19 Washington and Tucker? Is that your testimony?</p> <p>20 Again --</p> <p>21 A. Which -- testified -- just testified at 22 Locust and Tucker that's where they were throwing 23 stuff. Now you're asking me what happened at 24 Washington and Tucker?</p> <p>25 Q. Again, I think I explained that's all --</p>

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<p>1 I'm surprised we're still confused on it. I'm only 2 focusing about the events at Washington and Tucker 3 in the, let's say -- 4 A. Okay. 5 Q. -- half-hour before the mass arrest, sir. 6 And my question to you, in that half-hour, 7 are you aware of any specific facts to support a 8 claim that any of the protesters at Washington and 9 Tucker were acting with force or violence? 10 A. Okay. I know that I got hit in the head, 11 my helmet, at Washington and Tucker. I can't speak 12 for any other officers. I didn't see other things 13 being thrown at them. 14 But at that point, they had not dispersed, 15 and that's why -- they had not dispersed from the 16 earlier actions that were violence against police 17 officers. That's where we made the arrest. 18 Q. Well, the dispersal order was given at 19 Locust and Tucker, correct? 20 A. That's right. 21 Q. Okay. The people at Washington and 22 Tucker, not all of them, were at Locust and Tucker, 23 correct? 24 A. I don't -- I don't -- I couldn't tell you 25 that.</p>	<p>1 A. I don't think it was a bottle. I think it 2 was more like a rock. I would have seen a bottle, I 3 believe. 4 Q. Okay. 5 A. I couldn't find the rock. 6 Q. Okay. Do you know who threw it at you? 7 A. No, I do not. 8 Q. Was it a protester? 9 A. It came out of nowhere. 10 Q. Okay. Other than that incident, are you 11 aware of any acts of force or violence by any other 12 protesters from 11:00 to approximately 11:30 before 13 the mass arrest that took place at Washington and 14 Tucker? 15 A. Not any other acts after Locust and 16 Tucker. 17 Q. Okay. And the events at Locust and 18 Tucker, do you recall again approximately when they 19 took place? 20 A. I think it was somewhere around 11:00. 21 Again, there's a timeline. 22 Q. Okay. Is it your understanding that the 23 mere possibility that people may commit an unlawful 24 act with force or violence provides a basis to 25 declare an unlawful assembly?</p>
<p style="text-align: center;">Page 58</p> <p>1 Q. Okay. Okay. Was a separate dispersal 2 order given at Washington and Tucker before the mass 3 arrest there? 4 A. I -- I -- I almost think so, but I 5 really don't know. 6 Q. Okay. And in order to issue a dispersal 7 order at Washington and Tucker, there had to be a 8 basis for an unlawful assembly, correct? 9 A. It would be unlawful -- see, you -- you 10 have your opinion. 11 Q. Okay. 12 A. I have my opinion. 13 Q. Okay. 14 A. The unlawful assembly had -- was at Locust 15 and Tucker. We brought officers from different 16 areas, gave people more than ample ways to disperse. 17 They chose not to disperse, and they were all 18 arrested. That's what happened. 19 Q. The location of the two things you're 20 talking about are three blocks apart, correct? 21 A. I'd say around three blocks. 22 Q. Yeah. Okay. I just want to make sure I'm 23 clear in terms of your understanding. 24 You pointed out the fact that you got hit 25 by a bottle, you believe, at Washington and Tucker?</p>	<p style="text-align: center;">Page 60</p> <p>1 A. Say it again. 2 Q. Sure. Is it your understanding that the 3 mere possibility that people may commit an unlawful 4 act with force or violence provide a basis to 5 declare an unlawful assembly? 6 A. I'm not sure about that. Is that in -- is 7 that in the statute or ordinance? I don't remember 8 reading it. 9 Q. No, I'm asking if that's your 10 understanding. 11 A. I -- I -- I would tell you, as an incident 12 commander, I wouldn't be declaring an unlawful 13 assembly if there was -- if -- if there -- if there 14 was a possibility, and I don't know what that -- I 15 don't know how -- how you would even describe that. 16 Q. Okay. 17 A. You're either throwing bottles at us or 18 you're not. 19 Q. Okay. 20 A. If I saw some guys stooped down making 21 Molotov cocktails, before they started lobbing them 22 at us, I would declare unlawful assembly there. 23 Q. Okay. But if you had a group of people 24 standing peacefully but you have concern because of 25 prior vandalism that there's a likelihood in your</p>

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<p>1 mind that this group of people may act violently 2 based on what happened hours before, my question to 3 you is does that give you a basis, in your mind, to 4 declare an unlawful assembly? 5 A. No, it does not. 6 Q. Okay. When the unlawful assembly was 7 declared at Locust and Tucker, am I correct that it 8 didn't tell people how far they had to leave the 9 area? 10 A. That's right. 11 Q. Am I correct when the unlawful assembly 12 was declared at Locust and Tucker it didn't tell 13 people for how long they had to leave the area, 14 correct? 15 A. That's right. 16 Q. Okay. And to the extent there was a group 17 of people already located at Washington and Tucker 18 at the time that the unlawful assembly was declared 19 at Locust and Tucker, in light of the fact that 20 there's three blocks separating those two locations, 21 would you agree with me that it's exceedingly 22 unlikely that the people at Washington and Tucker 23 would've heard the declaration of the unlawful 24 assembly at that -- knowing that distance? 25 A. I think you're making an assumption. I</p>	<p>1 Q. In your experience there, the sound of the 2 bullhorn travels three blocks -- 3 A. I don't know. 4 Q. -- clearly and unambiguously? 5 A. I've heard -- I've heard people yelling 6 from three blocks away. 7 Q. Okay. Is it your testimony that the use 8 of a bullhorn to declare an unlawful assembly 9 travels clearly and unambiguously three blocks so 10 people would hear it? 11 A. I -- I don't know. 12 Q. Okay. Were any of the people that were 13 acting in a violent manner at Locust and Tucker 14 arrested before they moved -- before the group moved 15 down, as you testified, to Washington and Tucker? 16 A. No, they were not. 17 Q. Is there a reason why even a handful of 18 those individuals were not arrested? 19 A. Yes, sir. 20 Q. What's that? 21 A. They -- Major Howard didn't feel like he 22 had enough policeman -- 23 Q. Okay. 24 A. -- to do it safely. 25 Q. When you look back at the events that</p>
<p style="text-align: center;">Page 62</p> <p>1 don't know that there was anybody at Washington and 2 Tucker when we told the people at Locust and Tucker 3 to disperse. I don't know who was at Washington and 4 Tucker. 5 Q. Do you know there was any protesters or 6 other people congregating in that area at the time 7 Is my question? 8 A. I have no idea. 9 Q. To the extent there were people in that 10 area, do you agree with me, just recognizing the 11 three-block distance you've testified to, it is 12 exceedingly unlikely that any of those people at 13 Washington and Tucker would have heard the 14 declaration of unlawful assembly and a dispersal 15 order three blocks away? 16 A. They were using -- 17 MR. DIERKER: Object to the form. 18 Excuse me. 19 THE WITNESS: I'm sorry. 20 MR. DIERKER: I'll object to the form 21 of the question. Calls for speculation. 22 You may answer. 23 A. No. They were using a bullhorn. I don't 24 -- I don't know. 25 BY MR. PRAISS:</p>	<p style="text-align: center;">Page 64</p> <p>1 happened at the Stockley protests, do you believe 2 that there's any lessons learned? Things that the 3 police could have done better? 4 A. You know, I -- I'll simply answer like 5 this: The dynamics of protests is sort of like the 6 dynamics of a prize fight. You can prepare all you 7 want, but you -- you have to react to what's thrown 8 your way. 9 I remember the fury and the ugliness of 10 the very first action right out here (indicated), 11 and I remember that at one point, I tried to -- we 12 had four buses of CDT come up and I thought that I 13 could de-escalate the situation by having them 14 leave. And I got three buses out, and then they 15 surrounded the last bus. I tried my best to keep 16 police cars out of sight of protesters, but later 17 that afternoon somebody had forgot to move a Tahoe 18 on that corner I'm looking down there, and they came 19 and trashed it. 20 So if I was going to try to do things 21 better, I'd try to keep our policeman away from the 22 protesters as much as I could because they were more 23 bent on taunting or hurling stuff at the officers, 24 including 20-pound landscape stones the night of -- 25 that Friday night. However, we're also -- it's our</p>

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<p>1 job to -- to make sure nobody gets hurt, no innocent 2 people, that there's a -- that we minimize 3 destruction of property and vandalism and try to 4 keep the peace.</p> <p>5 So I believe that when you ask me the 6 question what could we have done better, did the 7 best I could to try to keep up -- my officers out of 8 the sightlines of these protesters. I don't know I 9 could have done much better than that.</p> <p>10 Everything else we did, we had to do. I 11 wouldn't change a thing.</p> <p>12 Q. Okay. In terms of the interaction between 13 the police and the protesters in connection with 14 events of Sunday, September 17th, do you look back 15 at that and think there's things that could have 16 done -- been done differently or better, and 17 especially the use of chemical agents at the 18 individuals?</p> <p>19 A. Well, I don't -- I -- I saw -- I saw the 20 synopsis provided to the report describe of -- of -- 21 by officers that used their mace. So -- and I'm -- 22 I'm never going to second guess a policeman. I was 23 -- I wasn't there. I didn't see what they saw. So 24 in every instance, we gave ample warning about 25 munitions being -- being imminent.</p>	<p>1 to read and review the deposition to make 2 corrections as necessary, and we recommend that you 3 do so.</p> <p>4 THE WITNESS: I'll do it.</p> <p>5 MR. DIERKER: Okay. So we'll read 6 and sign.</p> <p>7 (WHEREIN, the proceedings were thereby 8 concluded at 2:24 p.m.)</p> <p>9 * * * * *</p>
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<p>1 And as far as at Washington and Tucker, I 2 read what those officers wrote. I wasn't close 3 enough to say anything that would make me think that 4 they didn't act exactly the way they were supposed 5 to act.</p> <p>6 Q. Would you agree with an assessment that 7 for all its bad press, the mass arrest that took 8 place on Sunday, September 17th went pretty well?</p> <p>9 A. I -- I'll say it like this: Had everybody 10 dispersed, we wouldn't have made one arrest. Even 11 the guys that were throwing -- or woman -- whoever 12 was throwing bottles at those officers, we brought 13 all the officers -- we -- they didn't have enough 14 officers to make the arrests safely.</p> <p>15 So I just said -- Sachs and I talked. We 16 decided to bring everybody up there. Everybody had 17 ample time to disperse. They chose not to. They 18 were arrested. That's what we had to do. They 19 could have easily walked away -- so easily walked 20 away.</p> <p>21 MR. PRAISS: Just give me a few 22 minutes. I may be finished.</p> <p>23 I have no further questions.</p> <p>24 MR. DIERKER: We have no questions.</p> <p>25 Colonel Leyshock, you have the right</p>	<p>1 CERTIFICATE OF REPORTER 2 3 I, Susan J. Pybas, CCR, No. 4 1446(T) within the State of Missouri, do hereby 5 certify that the witness whose testimony appears in 6 the foregoing deposition was duly sworn by me; that 7 the testimony of said witness was taken by me to the 8 best of my ability and thereafter reduced to 9 typewriting under my direction; that I am neither 10 counsel for, related to, nor employed by any of the 11 parties to the action in which this deposition was 12 taken, and further, that I am not a relative or 13 employee of any attorney or counsel employed by the 14 parties thereto, nor financially or otherwise 15 interested in the outcome of the action.</p> <p>16 17 18 19 Susan J. Pybas, CCR 20 21 22 23 24 25</p>

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<p style="text-align: right;">Page 69</p> <p>1 ALARIS LITIGATION SERVICES 2 3 April 23, 2019 4 5 Omri Praiss, Esquire 6 ACLU OF MISSOURI FOUNDATION 7 406 West 34th Street, Suite 420 8 Kansas City, Missouri 64111 9 10 IN RE: MALEEHA AHMAD, et al. v. CITY OF ST. LOUIS, 11 MISSOURI 12 13 Dear Mr. Praiss: 14 15 Please find enclosed your copies of the deposition of 16 GERALD LEYSHOCK taken on April 17, 2019 in the 17 above-referenced case. Also enclosed is the original 18 signature page and errata sheets. 19 20 Please have the witness read your copy of the 21 transcript, indicate any changes and/or corrections 22 desired on the errata sheets, and sign the signature 23 page before a notary public. 24 25 Please return the errata sheets and notarized 16 signature page within 30 days to our office at 711 N 17 11th Street, St. Louis, MO 63101 for filing. 20 21 Sincerely, 22 23 Susan J. Pybas 24 25 Enclosures</p>	<p style="text-align: right;">Page 71</p> <p>1 STATE OF _____ 2 3 COUNTY OF _____ 4 5 I, GERALD LEYSHOCK, do hereby certify: 6 That I have read the foregoing deposition; 7 That I have made such changes in form 8 and/or substance to the within deposition as might 9 be necessary to render the same true and correct; 10 That having made such changes thereon, I 11 hereby subscribe my name to the deposition. 12 I declare under penalty of perjury that the 13 foregoing is true and correct. 14 Executed this _____ day of _____, 15 20____, at _____. 16 17 18 19 20 _____ 21 22 23 _____ 24 NOTARY PUBLIC 25 My Commission Expires:</p>
<p style="text-align: right;">Page 70</p> <p>1 ERRATA SHEET 2 Witness Name: GERALD LEYSHOCK 3 Case Name: MALEEHA AHMAD, et al. v. CITY OF ST. LOUIS, 4 MISSOURI 5 Date Taken: APRIL 17, 2019 6 7 Page #____ Line #_____ 8 Should read: _____ 9 Reason for change: _____ 10 11 Page #____ Line #_____ 12 Should read: _____ 13 Reason for change: _____ 14 15 Page #____ Line #_____ 16 Should read: _____ 17 Reason for change: _____ 18 19 Page #____ Line #_____ 20 Should read: _____ 21 Reason for change: _____ 22 23 Page #____ Line #_____ 24 Should read: _____ 25 Reason for change: _____ 26 27 Witness Signature: _____</p>	

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